

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

SCOTT FINK

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CRIMINAL NO: 03-10361-RWZ

GOVERNMENT'S RESPONSE TO SCOTT FINK'S MOTION
FOR AN ORDER DIRECTING THE UNITED STATES MARSHAL
TO HONOR A WRIT OF HABEAS CORPUS FROM FALL RIVER DISTRICT COURT

The United States of America, by and through its undersigned counsel, respectfully submits this response to Scott Fink's motion captioned "Motion for an Order Directing Marshals to Make Defendant Available to Bristol County Sheriff's Department on November 21, 2005, for Hearing in Fall River District Court."

Fink pleaded guilty in this case on May 25, 2005, to a one-count indictment charging him with conspiracy to distribute, and to possess with intent to distribute, five kilograms or more of cocaine. Sentencing was initially scheduled for September 13, 2005, and was later continued at Fink's request to November 16, 2005. Fink recently filed another motion to continue his sentencing hearing to an unspecified date. That motion is still pending.

Following Fink's guilty plea in this case, he was remanded to the custody of the United States Marshal, who is detaining him at the Plymouth County House of Correction pursuant to a contract

between the United States Marshal Service ("USMS") and that facility.

Fink's motion indicates that a Fall River District Court judge has issued a writ of Habeas Corpus For Prosecution directing that Fink be brought before the Fall River District Court on November 21, 2005, at 9:00 a.m. Although government counsel has not yet seen the writ, if it is the same as an earlier writ that the Fall River District Court issued for Fink's appearance, it is directed to "the official in charge of" the Plymouth House of Correction rather than to the United States Marshal.

The USMS has informed government counsel that it considers Fink a security and flight risk, and the government concurs in that assessment. Fink has 23 criminal history points based primarily on a long history of violent crime, drug crime, violation of abuse prevention orders, and theft. In 1990, he was convicted of assault with intent to murder after smashing a victim's skull with a metal pipe and sentenced to 10-12 years' imprisonment. He has violated the terms of his pretrial release and/or probation in a number of cases. In this case, when confronted by the police, he tried to avoid capture by fleeing in his car and then on foot.

In light of these considerations and others, the government

opposes Fink's motion for an order directing the United States Marshal to honor the state writ of habeas corpus for prosecution unless the following conditions are met:

1. The writ should be directed to the United States Marshal, not "the official in charge of" the Plymouth House of Correction. Both the USMS and the Plymouth House of Correction view federal detainees as being at all times in the custody of the United States Marshal (as does the Court). It is important to both entities for legal reasons that all pleadings, orders, etc., reflect this arrangement.

2. The officials involved in requesting Fink's presence in Fall River District Court and in transporting him there must comply with USMS's standard requirements for honoring state writs of habeas corpus. A copy of those standard requirements is attached. The requirements are designed to ensure that Fink will remain at all times in secure custody; that Fink will be available in federal court when needed; and that the USMS will not become responsible for certain costs (i.e. primarily transportation, security, and overtime pay) associated with honoring the writ.

WHEREFORE, the United States Attorney respectfully requests that Fink's motion be granted only if the conditions enumerated in this response are met.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ William Weinreb
WILLIAM D. WEINREB
Assistant U.S. Attorney